

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 08-16-69447
HUD# 07-16-4728-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

PERRY REID PROPERTIES-MANAGEMENT, LLC

9200 Andermatt Drive, Suite A
Lincoln, Nebraska 68526-9639

SM HERITAGE HILLS, LLC

9200 Andermatt Drive, Suite A
Lincoln, Nebraska 68526-9639

BRESTER CONSTRUCTION, INC.

1200 Infinity Court
Lincoln, Nebraska 68512-9376

RONETTE RILEY ARCHITECT

494 8th Avenue, FL 15
New York, New York 10001-2557

STUDIO951 LTD.

800 P Street, Suite 203
Lincoln, Nebraska 68508-1481

COMPLAINANT

ANGELA JACKSON (formerly WILLIAMS)

Commissioner, Iowa Civil Rights Commission
400 East 14th Street
Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street
Des Moines, Iowa 50319

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the “Iowa Civil Rights Act of 1965,” Iowa Code Chapter 216. Complainant alleged Respondents designed and constructed covered multifamily dwellings in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the “usable doors,” the “accessible route into and through the covered unit,” the “light, switches, thermostats, electrical outlets in accessible locations,” and the “usable kitchens and bathrooms” requirements.¹

Complainant specifically alleged, in Unit 9208, 8350 Cascades Avenue, Cascades at Jordan Creek [“Cascades”], four features within one of the covered ground-floor units appeared inaccessible to a person utilizing a wheelchair for mobility – (1) the door to the walk-in closet had a clear opening width of 30 inches, which is less than the required minimum nominal 32 inches (or 31 $\frac{5}{8}$ inches); (2) the change in level from the unit’s interior finished floor surface to the top of the threshold to the deck was measured at 1 $\frac{5}{8}$ inches, which exceeds the maximum allowable threshold of $\frac{1}{4}$ -inch without 1:2 beveling, which appeared to the tester to be lacking; (3) the lowest thermostat control in the living room was located 52 $\frac{7}{8}$ inches above the finished floor, which exceeds the 48-inch maximum allowed height for environmental controls; and (4) the clearance from the midline of the sink to the wall was measured at 22 $\frac{1}{2}$ inches in one bathroom and 19 $\frac{1}{2}$ inches in the other, both of which are less than the 24-inch clearance required for a parallel approach needed because the sinks as observed by the tester were not easily removable.

Description of the Subject Property

Subject Property

Cascades consists of one residential-unit building and the Clubhouse Building. The building was issued a Certificate of Occupancy on July 10, 2016, signed by Thomas John Estlund, Building & Rental Inspector for the City of West Des Moines. According to Craig Reid, President of Perry Reid Properties, Respondents plan to build eight additional residential buildings designed and built in the same manner as the inspected building. Three of the eight buildings are currently under construction. Once all nine dwelling unit buildings are built, it is expected that there will be 69 ground-floor units.

The construction of ground-floor units within the residential unit-building was based on five different designs.² The table at the top of the next page lists – for the inspected building only – the unit types, the number of units per type, the different groups of unit types, the total number of units per group, and the unit numbers of the inspected units.³

¹ See Iowa Code §§216.8A(3)(c)(3)(b) [Requirement 3 – Usable Doors]; 216.8A(3)(c)(3)(c)(i) [Requirement 4 – Accessible Route into and Through the Covered Unit]; 216.8A(3)(c)(3)(c)(ii) [Requirement 5 – Light Switches, Thermostats, Electrical Outlets in Accessible Locations]; and 216.8A(3)(c)(3)(c)(iv) [Requirement 7 – Usable Kitchens and Bathrooms].

² See Appendix B for floor plans.

³ See Appendix C for the configuration of the ground-floor unit types in all 9 residential-unit buildings.

UNIT TYPE ⁴	TOTAL UNITS PER TYPE [INSPECTED UNITS]
B [Napa] – ANSI Type B – 1BR/1BA	2 – [9203]
D [Sonoma] – ANSI Type B – 2BR/2BA	2 – [9204]
D2 [Sierra] – ANSI Type B – 2BR/2BA	2 – [9208]
E [Riverside] – ANSI Type A – 2BR/2BA	1 – [9202]
F [Solano] – ANSI Type B – 3BR/2BA	1 – [9207]
TOTAL	8

In the table above, the ANSI Type-A unit is a unit designed and built to be more accessible; it exceeds the requirements of the ICRA and FHA. The ANSI Type-B units are less accessible, but meet the requirements of the ICRA and FHA. Finally, all unit types have porches.

The scope of this agreement includes all 69 ground-floor dwelling units and the public and common use areas, including the parking garages; exterior parking lot; waste dumpsters; wall-mounted mailboxes; interior hallways; swimming pool; and the Clubhouse Building, which houses the clubhouse, leasing office, beverage center, business center, fitness center, and tanning bed.

Respondents' Defenses:

When asked in the questionnaire what was true or false about the allegations, Respondents answered:

Item 1 [C]loset door will be removed. This will provide a min. 31 5/8' clearance. All future buildings with this floor plan have been or will be changed per Architect revision to allow a min 31 5/8" clearance.

Item 2 Accessible ramp from interior of unit to the patio will be added at owner expense to any Resident that provides a Reasonable Accommodation request. See Exhibit #4.

Item 3 All 1st floor accessible unit thermostats are being lowered to a max. 48" height. All future building will have thermostat installed at a max. height of 48".

Item 4 If a unit has been completed with a less than 24" clearance on each side, the sink will be moved upon a Resident requesting a Reasonable Accommodation for the sink to be moved. All future units will have the sink placed in the countertop to provide 24" clearance on each side. See Exhibit #3

⁴ *Id.*

Report of Preliminary Findings:

ICRC Investigators inspected five units at Cascades, as well as the public and common use areas in and surrounding the complex. After conducting an onsite inspection of Units 9203, 9204, 9208, 9202, and 9207; and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

- 1) Slope measurements were taken along the eastbound sidewalk path from the parking spaces designated as reserved for persons with disabilities to the lower level area of the Clubhouse Building, which exceed the maximum thresholds established by ANSI 1986 and 2010 ADAAG, rendering this path inaccessible to persons who utilize wheelchairs for mobility. As shown in the table below, some exceed the 2% cross-slope maximum, some exceed the 5% running-slope without handrails maximum, and some exceed the 8.33% running-slope with handrails maximum.

SIDEWALK SECTION	RS = RUNNING SLOPE CS = CROSS SLOPE	HORIZONTAL PROJECTION IN FEET
Square 2 ⁵	RS = 8.9%	18
Square 3 ⁶	RS = 8.6%	
Square 4 ⁷	RS = 8.0%	
Square 6 ⁸	RS = 8.4%	18
Square 7 ⁹	RS = 7.5%	
Square 8 ¹⁰	RS = 8.2%	
Square 10 ¹¹	RS = 7.2%	24
Square 11 ¹²	RS = 7.2% / CS = 2.4%	
Square 12 ¹³	RS = 6.9% / CS = 2.7%	
Square 13 ¹⁴	RS = 7.3% / CS = 2.8%	
Square 14 ¹⁵	RS = 8.1% / CS = 2.5%	
Square 17 ¹⁶	RS = 8.2%	6
Square 24 ¹⁷	RS = 7.9%	6
Square 28 ¹⁸	RS = 8.3%	6

- 2) The top four rows of mailboxes are inaccessible to persons who utilize wheelchairs as they exceed the 54-inch maximum height allowed by ANSI 1986. Eight mailboxes within

⁵ See Appendix A, Photos 1E and 1F.

⁶ See Appendix A, Photos 1G and 1H.

⁷ See Appendix A, Photo 1I.

⁸ See Appendix A, Photo 1J.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Appendix A, Photo 1K.

¹² See Appendix A, Photos 1K, 1L, and 1M.

¹³ See Appendix A, Photos 1K and 1N.

¹⁴ See Appendix A, Photo 1P.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Appendix A, Photo 1Q.

¹⁸ See Appendix A, Photo 1R.

each of the 13 20-mailbox clusters and four mailboxes within the 9-mailbox cluster (108 total) are inaccessible. None of the mailboxes in the top four rows may be assigned to any of the 69 ground-floor units.

- 3) The rent drop box is located inside the Mail Room, near the main entrance to the Clubhouse Building. There is enough clear floor space in front of the rent drop box for residents using wheelchairs to make a parallel approach. The height of the slit in the rent drop box was measured at 65 ½ inches.¹⁹ This height is greater than the 54-inch maximum per ANSI 1986.
- 4) The width of the path between the island and the refrigerator was measured by the ICRC investigators at 31 ¼ inches. The width of the path between the island and the opposing counter was measured at 38 ¼ inches.²⁰ The width of the path around the kitchen island in the Clubhouse would have been compliant with the 40-inch minimum width if installed according to the plans. But, as built, the path is too narrow, rendering this common use kitchen unusable by persons using wheelchairs.
- 5) The distance from the midline of the sink to the nearest obstruction was measured in the women's public bathrooms in the Clubhouse Building – one located in the lower level and the other located at the main level. The midline of the sinks in both of these bathrooms was no more than 13 3/16 inches from the adjoining wall.²¹ The clear floor space centered in front of the bathroom sink in each of the women's bathrooms in the Clubhouse Building would have been compliant with the 15-inch minimum distance between the midline of the sink and the partition wall if they had been installed according to the plans.²² But, as installed, the sinks in the women's bathrooms are too close to the partition wall, rendering these public bathrooms unusable by persons using wheelchairs.

Measurements of the clear opening widths at the interior doors within the inspected units were taken, which are less than the 31 ⅝-inch minimum required by the Manual.²³ Only the clear opening widths that measured less than the required 31 ⅝-inch minimum are reported in the table below.

¹⁹ See Appendix A, Photos 3A and 3B.

²⁰ See Appendix A Photos 5 and 6.

²¹ See Appendix A, Photos 5A and 5B.

²² See Appendix B

²³ See Manual at pages 3.5 and 3.10.

UNITS	DOORWAY LOCATION	CLEAR OPENING WIDTH IN INCHES
Unit 9203 ["B" Napa] 1BR/1BA	Bedroom	28
	Bathroom	27 ⁷ / ₈
Unit 9204 ["D" Sonoma] 2BR/2BA	Non-master bedroom	28
	Master Bedroom	28
	Non-master Bathroom	28
	Master Bathroom 2	28
	Walk-in closet in Non-master bedroom	27 ³ / ₄
Unit 9208 ["D2" Sierra] 2BR/2BA	Walk-in closet in Non-master bedroom	30
Unit 9202 ["E" Riverside] 2BR/2BA	Non-master bedroom	28
Unit 9207 ["F" Solano] 3BR/2BA	Non-master bedroom 1	28
	Non-master bedroom 2	28
	Master bedroom	28
	Non-master bathroom	29 ³ / ₄
	Master Bathroom	28

These interior doorways would have been compliant with the 31 ⁵/₈-inch minimum clear opening width requirement if installed according to the plans. But, as built, they are too narrow, rendering them unusable by persons using wheelchairs.²⁴

- 6) All of the interior threshold heights at the sliding glass doorways in the inspected units exceed the ¹/₄-inch maximum allowed for thresholds without beveling.²⁵ The exterior wooden balcony surface was measured at the secondary entrances in the Napa, Riverside, and Solano units to be at no less than ³/₄ inches below the interior finished floor surface.²⁶ The exterior wood balcony surfaces for these three unit types are below the interior finished floor surface by more than the ¹/₂-inch maximum that is allowed for pervious exterior surfaces. The thresholds at the sliding glass doorways in the inspected dwelling units would have been compliant with the maximum threshold values referenced above if installed according to the plans. But, as built, they are too high, rendering them unusable by persons using wheelchairs.²⁷
- 7) Except for Unit 9202 [Riverside], the height of the top control buttons of the thermostats in all units was measured at no less than 53 ³/₄ inches.²⁸ The heights of the thermostats in the inspected dwelling units would have been compliant with the 48-inch

²⁴ See Appendix A, Photo 6A

²⁵ See Appendix A, Photos 4A and 4B.

²⁶ See Appendix A, Photo 4F.

²⁷ See Appendix A, Photos 7A and 7B.

²⁸ See Appendix A, Photos 3A and 3B.

maximum height if installed according to the plans. But, as built, they are too high, rendering them unusable by persons using wheelchairs.²⁹

- 8) Except for Unit 9207 [Solano], the kitchens in each of the other units have an island. The width of the path between the island and the opposing counter was measured at 39 $\frac{3}{4}$ inches in Unit 9203 [Napa] and 39 $\frac{3}{8}$ inches in Unit 9208 [Sierra].³⁰ The widths of the paths in the kitchens of Units 9203 [Napa] and 9208 [Sierra] would have been compliant with the required 40-inch minimum width if installed according to the plans. But as built, they are too narrow, rendering them unusable by persons using wheelchairs.³¹
- 9) The distance from the midline of the sink to the nearest obstruction was measured in the bathrooms of the inspected units to determine compliance with the 24-inch minimum distance required by the Manual.³² In the table below, the only distances reported are those between the midline of the bathroom sinks and the adjacent wall that measured less than the 24-inch minimum required.³³

UNITS	BATHROOM TYPE	MIDLINE OF SINK TO WALL IN INCHES
Unit 9204 [“D” – Sonoma] 2BR/2BA	Master Bathroom	20
Unit 9208 [“D2” Sierra] 2BR/2BA	Master Bathroom	20
Unit 9207 [“F” Solano] 3BR/2BA	Non-Master Bathroom	22 $\frac{1}{8}$
Unit 9207 [“F” Solano] 3BR/2BA	Master Bathroom	23 $\frac{3}{8}$

The bathroom sinks in the inspected dwelling units would have been compliant with the 24-inch minimum distance between the midline of the sink and the closest obstruction if installed according to the plans. But, as installed, they are too close to the adjacent wall, rendering them unusable by persons using wheelchairs.³⁴

- 10) The height of the bathroom towel bars in all of the inspected units was measured at no less than 56 inches, which exceeds the 54-inch maximum height allowed by ANSI 1986 for features at dwelling units required to be reachable, and renders these towel bars unusable by persons using wheelchairs.³⁵

²⁹ See Appendix A, Photos 7A and 7B.

³⁰ See Appendix A Photos 9A, 9B, and 9C.

³¹ See Appendix A, Photos 7A and 7B.

³² See Manual at pages 3.5 and 3.10.

³³ See Appendix A, Photo 7A.

³⁴ See Appendix A, Photo 6A.

³⁵ See Appendix A, Photo 11A.

Respondents' Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

- 1) Respondents will remove and replace sidewalk sections exceeding the 2%-maximum cross slope to bring them into compliance with both the 2% maximum cross-slope and the 8.33% maximum running-slope. Respondents will install ADA-compliant handrails on both sides of the path with running slopes $>5\%$ and $\leq 8.33\%$.
- 2) Respondents will reassign any mailboxes that are at heights greater than the 54-inch maximum allowed, which are assigned to ground floor units. Respondents will ensure all ground-floor units will have mailboxes in the bottom six rows of mailboxes, all of which are at heights less than the 54-inch maximum.
- 3) Respondents have relocated the rent drop box to a height of less than the 54-inch maximum allowed.
- 4) Respondents maintain the clear width of the path around the kitchen island is not a deficiency because the opposing features in the Clubhouse kitchen are restricted to employees only and tenants are not currently allowed to reserve the Clubhouse.
- 5) Respondents will remove the counter to the sink in each bathroom, cut two inches off the countertop, and reinstall it further away from the partition wall, such that the midline of the sink will be 15 inches away from the partition in the women's restrooms.
- 6) Respondents stated the buildings that are newer than Building 9000 will all have every interior doorway with a clear opening width of 32 inches or more, and proposed to modify the interior doorways in Building 9000 if a Reasonable Modification request is made by a tenant.
- 7) Respondents will use an aluminum ramp to make usable the path from the threshold at the sliding glass doorway to the balcony for those tenants who make a Reasonable Modification request. Respondents will let prospective tenants when they sign lease agreements know in writing and verbally about the availability of the ramps. Respondents will keep the ramps at the leasing office and install them upon request.
- 8) Respondents will lower the thermostat controls in all ground-floor units such that the top operating control buttons will be at a height no greater than the 48-inch maximum allowed whenever units are unoccupied.
- 9) Respondents claim the clear width of the path between the kitchen island and opposing features in Units 9203 and 9208 is not a deficiency because the current width of the path is within the construction tolerance range instead of an actual deficiency.
- 10) Respondents will retrofit the non-complaint bathroom sinks in Buildings 9000 and 1000 either by either reinstalling the sinks further away from the wall, reinstalling the counter top, or installing an off-center sink if a Reasonable Modification request was made by a

tenant. Respondents will ensure that all newer buildings will have sinks with midlines that are no less than 24 inches away from the wall.

- 11) Respondents will reinstall the non-compliant towel bars to a height of 54 inches or less whenever a unit becomes unoccupied.

Assessment of Deficiencies:

Respondents stated all units were built in accordance with the scoping requirements of the 2012 International Building Code [IBC 2012], which incorporates the standards of the 2009 American National Standards [ANSI 2009] for guidance on the technical requirements [i.e., the dimension requirements]. Neither the IBC 2012 nor the ANSI 2009 is one of the safe harbors accepted by HUD.³⁶ Therefore, the Manual, which incorporates ANSI 1986 for some of the technical requirements, must be used to assess and determine compliance with the ICRA and FHA, not IBC 2012 or ANSI 2009.

The public areas must meet the requirements of the ADA in addition to those of the FHA, as people other than tenants or tenants' visitors will visit or frequent those areas. The common use areas, however, such as parking spaces, mailboxes, and dumpsters, are governed by the FHA since they are only for use by the tenants of the subject property. The ADA will only be referenced in the current agreement for the public areas, which include the parking lot, sidewalks, and interior hallways.³⁷ Finally, the requirements of the ADA will be presented as stated in the "2010 American with Disabilities Act Standards: 2004 ADAAG for Titles II and III Facilities" (ADAAG). *See* 42 U.S.C. 12204, Part 1191, Appendix A, and 42 U.S.C 12186(b); 28 CFR Part 36, Appendix B.

Following is the assessment of the reported deficiencies, based on the scoping and technical requirements of the 2010 ADAAG and the Manual:

- 1) ICRC concurs with Respondents' proposals to (i) remove and replace sidewalk sections exceeding the 2%-maximum cross slope to bring them into compliance with both the 2% maximum cross-slope and the 8.33% maximum running-slope; and (ii) to install ADA-compliant handrails on both sides of the path with running slopes >5% and ≤ 8.33%.
- 2) ICRC concurs with Respondents' proposal to reassign any mailboxes that are at heights greater than the 54-inch maximum allowed, which are assigned to ground floor unit; and to ensure that all ground-floor units will have mailboxes in the bottom six rows of mailboxes, all of which are at heights less than the 54-inch maximum.

³⁶ <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on March 28, 2014).

³⁷ The ADAAG defines "Public Use" as "[I]nterior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned." *See* "Definitions" on page 47 of ADAAG available online at http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf. Therefore, since the interior hallways and parking spaces are available for use by prospective tenants, who are part of the general public, these areas are deemed to be "Public Use."

- 3) ICRC acknowledges Respondents' completed the retrofit – in which they relocated the rent drop box at a lower height of 53 $\frac{3}{8}$ inches, as based on the photograph they submitted – has corrected this deficiency.³⁸ No further action is required on this deficiency.
- 4) ICRC does not agree with Respondents' initial assessment that the clear width of the path around the kitchen island is not a deficiency because the opposing features in the Clubhouse kitchen are currently restricted to employees only and tenants are not currently allowed to reserve the Clubhouse.

ICRC will require a retrofit to increase the width of the path between the kitchen island and all opposing features, including the refrigerator, because future owners and managers of subject property will have the ability to allow tenants to use all features in the Clubhouse kitchen.

ICRC concurs with Respondents' most recent proposal to replace the refrigerator with one that has decreased depth to increase the width of the path at the refrigerator to within one-inch from the 40-inch minimum. ICRC also concurs with Respondents' proposal to move the countertop in the kitchen island to further increase the width of the path to within less than one inch from the 40-inch minimum.

- 5) ICRC concurs with Respondents' proposal to remove the countertop to the sink in each bathroom, cut two inches off the countertop, and reinstall it further away from the partition wall, as long as the midline of the sink is at least 15 inches away from the partition in the women's restrooms. Otherwise, ICRC will require more to be cut off the countertop such as to achieve the minimum required 15-inch distance from the partition wall.
- 6) ICRC concurs with Respondents' proposal to build the buildings newer than Building 9000 such that all ground-floor units will have interior doorways with a clear opening width of at least 32 inches.

ICRC does not agree with Respondents' proposal to wait until they receive a request from one of the tenants with disabilities who occupy ground-floor units in Building 9000 before widening non-compliant interior doorways to a minimum width of 32 inches.

ICRC will require Respondents to retrofit the non-compliant doorways in Building 9000 after a tenant vacates a unit and before the next tenant occupies that unit. ICRC will require Respondents to notify current tenants occupying the ground-floor units about the option to perform this retrofit at no charge to them if they require it because of a disability.

- 7) ICRC concurs with Respondents' proposal to install aluminum ramps as a retrofit to correct the interior thresholds with excessive heights at all ground-floor units. However, ICRC does not agree with Respondents' proposal to wait until they receive a request

³⁸ See Appendix D.

from one of the tenants with disabilities who occupy ground-floor units in any of the current buildings or in those to be built before installing aluminum ramps (*See* ramps online at <http://www.discountramps.com/silver-spring-plate-threshold-ramps/p/Threshold-PP/>).

ICRC will require Respondents to install ramps, whether aluminum or otherwise, at the non-compliant thresholds at the sliding glass doorways after a tenant vacates a unit and before the next tenant occupies that unit. ICRC will require Respondents to notify current tenants occupying the ground-floor units about the option to install ramps at sliding glass doorways at no charge to them if they require it because of a disability.

If rubber ramps are used (*see* ramps at <http://www.discountramps.com/ez-edge-threshold-ramps/p/RAEZ-Ramps/>), ICRC will require Respondents to replace the ramps as they become unsafe or unusable due to deterioration from continued use.

- 8) ICRC concurs with Respondents' proposal to reinstall the thermostats in all ground-floor units such that the top operating control buttons will be at a height no greater than the 48-inch maximum allowed whenever units are unoccupied after a tenant vacates a unit and before the next tenant occupies that unit. ICRC will require Respondents to notify current tenants occupying the ground-floor units about the option to perform this retrofit at no charge to them if they require it because of a disability.
- 9) ICRC does not agree with Respondents' initial assessment that the clear width of the path around the kitchen island in Units 9203 [Napa] and 9208 [Sierra] is not a deficiency because the current width of the path is within the construction tolerance range instead of an actual deficiency.

ICRC will require a retrofit to increase the width of the path between the kitchen island and all opposing features, including the refrigerator, because, although construction tolerances are specified for other features in dwelling units, no such allowance is made for the clear width of the paths in kitchens.³⁹

ICRC concurs with Respondents' most recent proposal to either cut enough from the countertop or reinstall the countertop further away from the opposing features such as to increase the clear width of the path around the kitchen island to a minimum of 40 inches whenever units are unoccupied or after a tenant vacates a unit and before the next tenant occupies that unit. ICRC will require Respondents to notify current tenants occupying the ground-floor units about the option to perform this retrofit at no charge to them if they require it because of a disability.

- 10) ICRC concurs with Respondents' proposal to install all sinks with midlines at no less than 24 inches away from the closest wall in the ground floors of all buildings not yet built. ICRC also concurs with Respondents' proposal to retrofit the non-complaint bathroom sinks in Buildings 9000 and 1000 either by reinstalling the sinks further away from the wall, reinstalling the counter top, or by installing an off-center sink. However,

³⁹ *See* Manual at pages 3.5 and 5.7.

ICRC does not agree with Respondents' proposal to wait for a request to be received from a tenant before completing this retrofit.

ICRC will require Respondents to complete the retrofit to correct this deficiency after a tenant vacates a unit and before the next tenant occupies that unit. ICRC will require Respondents to notify current tenants occupying the ground-floor units about the option to perform this retrofit at no charge to them if they require it because of a disability.

- 11) ICRC concurs with Respondents' proposal to reinstall the non-compliant towel bars to a height of 54 inches or less after a tenant vacates a unit and before the next tenant occupies that unit. ICRC will require Respondents to notify current tenants occupying the ground-floor units about the option to perform this retrofit at no charge to them if they require it because of a disability.

Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an on-site inspection of the subject property, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the "Iowa Civil Rights Act of 1965" (ICRA); or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).
2. Respondents acknowledge the ICRA makes it unlawful to discriminate in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status. Iowa Code § 216.8(1)(b).
3. Respondents acknowledge the ICRA makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person. Iowa Code § 216.8(1)(a).
4. Respondents acknowledge the Fair Housing Act (FHA) makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the of race, color, religion, sex, familial status, or national origin. 42 U.S.C. 3604(f)(1)(a) (§ 804(f)(1) of the Fair Housing Act).

5. Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling and to the extent that the accommodation does not cause undue financial or administrative burden or fundamentally alter the nature of the provider's operations. 42 U.S.C. 3604(f)(3)(b) (§ 804(f)(3)(b) of the Fair Housing Act); Iowa Code § 216.8A(3)(c)(2).
6. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability. 42 U.S.C. 3604(f)(2)(a) (§ 804(f)(2)(a) of the Fair Housing Act); Iowa Code § 216.8A(3)(b)(1).
7. Respondents acknowledge as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in buildings with no elevator or all units in buildings with an elevator, and consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216. 8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C).

HUD has described these accessibility requirements via regulation and in several publications, including the “Final Fair Housing Accessibility Guidelines.” 24 C.F.R. Part 100.200 *et seq.*; 56 Fed. Reg. 9,472. In the “Guidelines,” HUD presented the seven specific requirements as:

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common areas.
3. Usable doors.
4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Reinforced walls for grab bars.
7. Usable kitchens and bathrooms.

Voluntary and Full Settlement

8. The parties acknowledge this Predetermination Settlement Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
9. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.

10. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.
11. Respondents agree the Commission may review compliance with this Agreement. And as part of such review, Respondents agree the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.

Disclosure

12. Because, pursuant to Iowa Code §216.15A(2)(d), the Commission has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Release

13. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Fair Housing / Accessible Design and Construction Training

14. Respondents agree Craig Perry, Dave Johnson, Brett Druba, and Ronnette Riley will:
 - (a) Receive training on the accessible design and construction requirements of State and Federal Fair Housing Laws within 180 days of their receipt of a Closing Letter from the Commission. The training will address the Fair Housing accessibility requirements that must be met in order to design and build covered dwellings and common use/public areas that are accessible and usable to individuals with mobility and visual impairments.

Attendance at Design and Construction training session offered during the "Build It Right Iowa" conference held at the ICRC Symposium – to be held on October 27, 2017⁴⁰ – will fulfill the requirement for this term. Otherwise, the training shall be conducted by a qualified person, approved by ICRC or the U.S. Department of Housing and Urban Development. Otherwise, attendance at one of the training

⁴⁰ <https://icrc.iowa.gov/news/5th-annual-iowa-civil-rights-symposium-and-2nd-build-it-right-iowa-conference> (Last visited on June 1, 2017).

sessions offered by Fair Housing Accessibility First will also fulfill the requirement for this term.⁴¹

Respondents also agree to send documentation to ICRC, verifying the fair housing / accessible design and construction training has been completed, within ten (10) days of completing the training.

15. Respondents agree Craig Perry, Dave Johnson, Brett Druba, Ronnette Riley, and current employees of Perry Reid Properties-Management, LLC, Brester Construction, Inc., Studio951 LTD., and Ronnette Riley Architect who are involved in the design and/or construction of covered multi-family dwelling properties, will, within 120 days from the date of the Closing Letter from ICRC:

- (a) Review and become familiar with the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998), which may be obtained online at <http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.
- (b) Submit separate signed written statements via email from each of the Respondents' representatives named above in paragraph "(a)", and their current employees or agents who are involved in the design and/or construction of covered multifamily-dwelling properties indicating:
 - i. They have reviewed and become familiar with the Fair Housing Act Design Manual.
 - ii. They understand what the Seven Main "Design Requirements of the Guidelines" are by listing them in the written statement.

Required Modifications or Retrofits

16. Respondents agree to make the following modifications or retrofits to the subject property:

Accessible and Usable Public and Common Use Areas – Eastbound Sidewalk Path from the Parking Spaces Designated as Reserved for Persons with Disabilities to the Clubhouse Building-Lower Level

- (a) The parties agree the cross slopes for the sidewalk sections that are part of the eastbound path *from* the parking spaces designated as reserved for persons with disabilities to the lower level area of the Clubhouse Building, need to meet maximum slope values established by ANSI and ADAAG – 2% maximum cross-slope; 5% maximum running-slope without ADAAG-compliant handrails; and 8.33% maximum running-slope with ADAAG-compliant handrails – because they are part of the only and most direct route without steps to the swimming pool and common use/public areas in the lower level of the Clubhouse Building, and therefore need to

⁴¹ See the "Training Calendar" section at the website for Fair Housing Accessibility First for sessions that will also allow for compliance with this term: <http://www.fairhousingfirst.org/training/calendar.html>

be accessible. The parties agree that sections of this path, as reported on page 4 of the current agreement, have slopes that are greater than slope maximums referenced above.

- (b) Respondents agree they will reinstall the non-compliant sidewalk sections exceeding maximum slope requirements – 2% maximum cross-slope and 8.33% maximum running slope with ADAAG-compliant handrails – referred to on page 4 of the current agreement such that those sidewalk sections, once reinstalled, will have a maximum cross-slope value of 2%, and a maximum running-slope value of either 5% without ADAAG-compliant handrails or 8.33% with ADAAG-compliant handrails as required by ADAAG and ANSI, and as specified in Appendix D.
- (c) Respondents agree they will install a handrail on each side of the sidewalk sections referred to on page 4 of the current agreement that either now, or once reinstalled, have running slope values $\geq 5\%$ and $\leq 8.33\%$, in compliance with the FHA and ICRA, and meeting the technical requirements specified in Section 505 of the 2010 ADAAG.⁴²

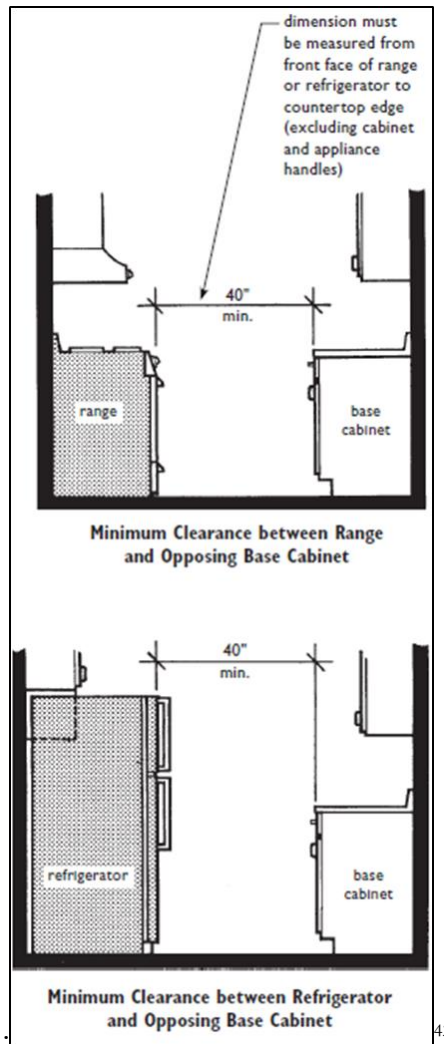
Accessible and Usable Public and Common Use Areas – Mailboxes

- (a) The parties agree that the mailbox keyholes for the top four rows of mailboxes are inaccessible to persons who utilize wheelchairs as they exceed the 54-inch maximum height allowed by ANSI 1986 – eight mailboxes within each of the 13 20-mailbox clusters and four mailboxes within the 9-mailbox cluster (108 total) – and are inaccessible.
- (b) Respondents agree they will rearrange the mailbox numbers of any mailbox compartments in the top four rows that belong to ground-floor tenants in any of the buildings such that all ground-floor units have mailbox keyholes with midlines that do not exceed the maximum height of 54 inches, as required by ANSI 1986.

Accessible and Usable Public and Common Use Areas – Clubhouse Kitchen

- (a) The parties agree the width of the path between the island and the refrigerator is 31 ¼ inches and 38 ¼ inches between the island and the opposing counter, which is less than the 40-inch minimum width required by the Manual and ANSI.
- (b) Respondents agree to widen the clear width of the path in the Clubhouse kitchen, the necessary distance to comply with the minimum allowable path clearance of 40 inches by either installing a smaller refrigerator and/or sliding the countertop on the kitchen island further away from the opposing features; or by relocating the kitchen island itself further away from the opposing features, and as required in the Manual and ANSI. Respondents agree to measure the clear width of the path as indicated in the figure below:

⁴² https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf (Last visited on June 1, 2017).



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Accessible and Usable Public and Common Use Areas – Women’s Public Bathrooms

- (a) The parties agree the midline of the sinks in the Women’s public bathrooms – one at the lower level and the other at the main level - is no more than 13 3/16 inches from the adjoining wall, which is less than the 15-inch minimum distance required by ANSI and ADAAG.⁴⁴
- (b) Respondents agree to retrofit the sink in both Women’s public bathrooms referred to in paragraph “(a)” above by removing the countertop to the sink in each bathroom, cut off the necessary from the countertop, and reinstall it further away from the partition wall, such that the midline of the sink is no less than 15 inches away from the partition wall.

⁴³ Manual at page 7.7.

⁴⁴ See Appendix A, Photos 5A and 5B.

Usable Doors – Clear Opening Width for Secondary Entrance

- (a) The parties agree the interior doorways of the inspected units, as reported on page 6 of the current agreement, have a clear opening width that is narrower than the 31 ⁵/₈-inch minimum required by the Manual.
- (b) Respondents agree they will retrofit the non-compliant interior doorways in every one of the ground-floor units reported on page 6 of the current agreement to increase the door-opening width to $\geq 31 \frac{5}{8}$ inches.
- (c) Respondents agree to measure the interior doorways of all ground-floor units in all buildings newer than Building 9000. If the clear-opening width of any of the interior doors is $< 31 \frac{5}{8}$, then Respondents agree to retrofit the interior doorways in the manner as described in “(b)” paragraph above to bring it into compliance with the ICRA and FHA.

Usable Doors – Threshold for Secondary Door

- (a) The parties agree the height onto the finished floor surface of the interior threshold at the sliding glass doorway of all inspected ground-floor units exceeds the ¹/₄-inch maximum height allowed for interior thresholds without beveling, as established by the Manual.

The parties agree the exterior wooden balcony surface in the secondary entrances at the Napa, Riverside, and Solano inspected units is no less than ³/₄ inches below the interior finished floor surface, which is more than the ¹/₂-inch maximum allowed by the Manual.⁴⁵ The exterior wood balcony surfaces for these three unit types are below the interior finished floor surface by more than the ¹/₂-inch maximum that is allowed for pervious exterior surfaces

- (b) Respondents agree they will permanently install either an aluminum or a rubber ramp – with a running slope of $\leq 8.33\%$ – at the interior side of the threshold to the sliding glass doorways of all ground-floor units and at the exterior side of the threshold of all units with wooden-surface balconies, as required by the Manual.
- (c) If rubber ramps are used, Respondents agree to annually inspect and, if necessary, replace any ramps that have become unsafe or unusable due to deterioration.
- (d) Respondents agree to measure the height of the interior side of the threshold at the sliding glass doorways in all of the other ground-floor units not inspected by ICRC investigators. If the height of interior side of the threshold exceeds the ¹/₄-inch maximum height allowed by the Manual, or the balcony surfaces at the ground-floor units with wooden-balcony surfaces are more than the ¹/₂-inch maximum beneath the interior finished floor surfaces, then Respondents agree to retrofit the thresholds in the same manner as described in “(b)” paragraph above to bring it into compliance with the ICRA and FHA.

⁴⁵ See Appendix A, Photo 4F.

Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations – Thermostats

- (a) The parties agree the height of the thermostat controls in all inspected units, except for Unit 9202 [Napa] exceed the maximum height of 48 inches, as allowed by the Manual.
- (b) Respondents agree they will lower the thermostat controls in all inspected ground-floor units, such that the display screen and all operating buttons do not exceed maximum height of 48 inches, as required by the Manual.
- (c) Respondents agree to measure the height of the thermostats display screen and operating buttons in all other ground-floor units not inspected by ICRC Investigators. If the height of the thermostats is greater than the 48-inch maximum height allowed by Manual, Respondents agree to retrofit the thermostats in the same manner as described in “(b)” paragraph above to bring it into compliance with the ICRA and FHA.

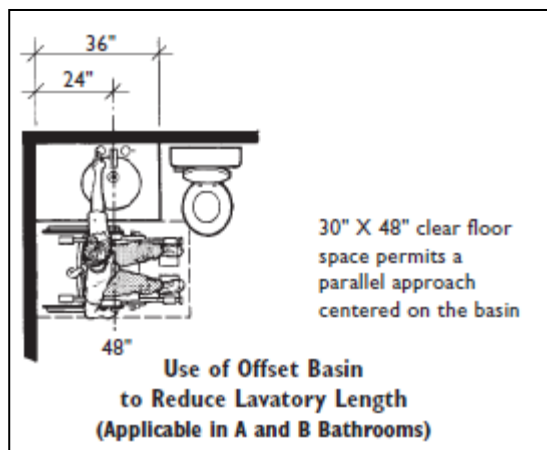
Usable Kitchens – Kitchen Islands

- (a) The parties agree the width of the path between the island and opposing counter is no less than 39 ³/₄ inches in Units 9203 [Napa] and 9208 [Sierra], which is less than the 40-inch minimum width required by the Manual and ANSI.
- (b) Respondents agree to increase the clear width of the path between the kitchen island and opposing features to at least 40 inches in Units 9203 [Napa] and 9208 [Sierra], by either sliding the countertop on the kitchen island further away from the opposing features and/or by cutting the necessary amount, to meet the 40-inch minimum requirement, and as required in the Manual and ANSI. Respondents agree to measure the clear width of the path as indicated in the figure on page 17 of the current agreement.
- (c) Respondents agree to measure the clear width of the path in all other ground-floor units with kitchen islands not inspected by ICRC Investigators. If the clear width of the path is less than the 40-inch minimum allowed by the Manual, Respondents agree to retrofit the kitchens in the same manner as described in “(b)” paragraph above to bring it into compliance with the ICRA and FHA.

Usable bathrooms – Bathroom Sinks

- (a) The parties agree the distance from the midline of the sink to the adjacent wall in the bathroom of the inspected units, as reported on page 7 of the current agreement, was measured at under the 24-inch minimum for bathroom sinks without removable cabinets, as required by the Manual.
- (b) Respondents agree to retrofit the non-complaint bathroom sinks in Buildings 9000, as reported on page 7 of the current agreement, and in Building 1000 by either reinstalling the sinks further away from the wall, reinstalling the counter top, or

installing an off-center sink, such that the midline of the sink will be no less than 24 inches from the nearest obstruction as required in the Manual, to meet the usability requirements of the FHA and ICRA, and as shown in the figure below from the Manual:



- (c) Respondents agree to measure distance from the nearest wall to the midline of the sink in the bathrooms of all other ground-floor units not inspected by ICRC Investigators. If the distance from the midline of the sink to the nearest obstruction is less than the 24-inch minimum allowed by the Manual, Respondents agree to retrofit the kitchens in the same manner as described in “(b)” paragraph above to bring it into compliance with the ICRA and FHA.

Usable Bathrooms – Towel Bars

- (a) The parties agree the height of the bathroom towel bars in all of the inspected units is no less than 56 inches, which exceeds the 54-inch maximum height allowed by ANSI 1986 for features at dwelling units required to be reachable, and renders these towel bars unusable by persons using wheelchairs.⁴⁷
- (b) Respondents agree they will reinstall the towel bars at a height of no greater than 54 inches in the bathrooms of all ground-floor units, as required by ANSI 1986.

Required Timelines for Completion of Modifications or Retrofits

17. Respondents agree that the above-required modifications or retrofits to the public and common use areas of the subject property – eastbound sidewalk path from the parking spaces designated as reserved for persons with disabilities to the clubhouse building-lower level, mailboxes, clubhouse kitchen, and women’s public restrooms – within 90 days from the date of the Closing Letter from ICRC.⁴⁸

⁴⁶ See Manual at 7.47

⁴⁷ See Appendix A, Photo 11A.

⁴⁸ The “Closing Letter” provides notice to the parties that the case has been closed. Once this agreement is fully executed, the Commission will issue its Closing Letter. It will be mailed to all parties and their representatives. A fully executed copy of the agreement will accompany the Closing Letter.

18. Respondents agree to notify all current tenants occupying ground-floor units, via a letter, within 60 days from the date of the Closing Letter from ICRC about the option to make a reasonable accommodation request because of a disability for any of the above-required modifications or retrofits in their units, at no charge to the tenants.
19. Respondents agree, for any tenant who makes a reasonable accommodation request that concerns one or more of the above-required modifications or retrofits, they will allow the tenant to make the decision whether the above-required modifications or retrofits are made during their tenancy. Respondents also agree those tenants who make that decision will be allowed to remain in their units while the renovations are being completed, so long as their continued stay is safe and does not unduly disrupt the renovation work. If their continued stay is not safe or unduly interferes with renovation work, Respondents agree to move the affected tenants to another suitable unit on a temporary basis, until the unit is made safe or the renovation work is completed. Respondents agree to pay all costs generated by such move.
20. Respondents agree to make the above-required modifications or retrofits to each of the units as each of the units becomes vacant, before it is occupied for the first time, or sooner if a current tenant makes a request for reasonable accommodation referenced in above paragraph “19”. Respondents agree to make the required modifications or retrofits before each of the units is rented again.

Mandatory Reporting Requirements

21. Respondents agree to notify ICRC (Attn: Emigdio Lopez-Sanders; Iowa Civil Rights Commission, 400 East 14th Street, Des Moines, Iowa 50319-0201) when they have completed the required modifications or retrofits for each of the units and the public and common use areas. Such notification shall be made within 90 days of completion. These required notifications to ICRC after each unit or common area is modified or retrofitted will continue until all required modifications or retrofits have been completed in all 69 units.
22. Respondents agree to submit a copy of the letter required above in paragraph “18” to ICRC for review and approval within 14 days of receiving a Closing Letter from ICRC, and before sending the letters.

ICRC will review and reply to Respondents about the request for approval within three business days of receiving a copy of the advertising and letters.
23. Respondents agree to send a copy to ICRC (Attn: Emigdio Lopez-Sanders; Iowa Civil Rights Commission, 400 East 14th Street, Des Moines, Iowa 50319-0201) of all written reasonable accommodation requests for the above-required retrofits and modifications.
24. Respondents agree, as the required modifications or retrofits are made to a particular unit, ICRC may then inspect such unit, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within 30 days of the inspection, to Respondents.

If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by ICRC.

25. The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required modifications or retrofits as specified in this Agreement.

Perry Reid Properties-Management, LLC.
RESPONDENT

Date

SM Heritage Hills, LLC
RESPONDENT

Date

Brester Construction, Inc.
RESPONDENT

Date

Ronnette Riley Architect
RESPONDENT

Date

Studio951 LTD.
RESPONDENT

Date

Angela Jackson
COMPLAINANT

Date

Kristin H. Johnson, Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date